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NATIONAL DIRECTORATE

713 Van Erkom Building
Pretorius St., Pretoria 0002
Telefax: (012) 325-6318
Telephone: (012) 21-2135

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TELEFAX TRANSMISSION

DATE 13 May '93

MESSAGE FOR Prof. Dennis Davis

FAX NUMBER (011) 397-211

SENDER A. Nel.

NUMBER OF PAGES (INCL. THIS ONE) 5

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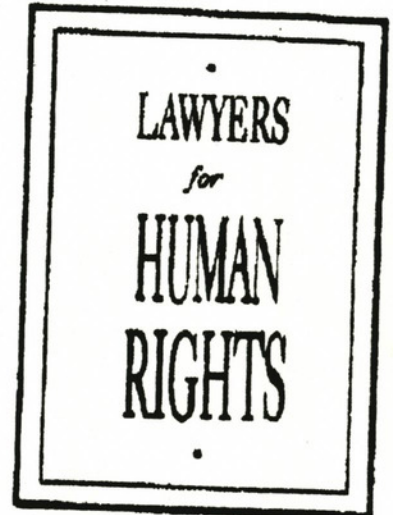
THANK YOU

· NATIONAL DIRECTORATE ·

730 Van Erkom Building
Pretorius St, Pretoria 0002
Telefax: (012) 325 6318
Telephone: (012) 21 2135
Docex 113, Pretoria

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**Administration
Multi-Party Negotiating Process**

Fax: (011) 397-2211

Dear Madam/Sir

SUBMISSIONS TO THE TECHNICAL COMMITTEE ON AN ELECTORAL COMMISSION

Kindly forward these submissions to Prof. Dennis Davis of the Technical Committee on an Independent Electoral Commission.

Yours sincerely

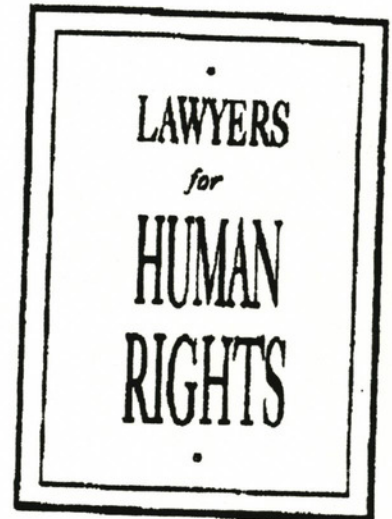
**ANDRIES NEL
PENAL REFORM PROJECT**

• NATIONAL DIRECTORATE •

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Pretorius St, Pretoria 0002
Telefax: (012) 325 6318
Telephone: (012) 21 2135
Docex 113, Pretoria

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Denis Davis
Technical Committee: Electoral Act

Fax: (011) 403-2341
(011)

Dear Prof. Davis

SUBMISSIONS: PRISONERS RIGHT TO VOTE

Herewith a very short submission on the right of prisoners to vote.

We understand that the Committee is meeting tomorrow. Please inform us as to whether it would be worthwhile preparing more substantial submissions.

Yours sincerely

A.

ANDRIES NEL
PENAL REFORM PROJECT

SUBMISSIONS TO THE TECHNICAL COMMITTEE ON THE ELECTORAL ACT
THE RIGHT OF PRISONERS TO VOTE

1. Introduction

We believe that South Africa's first non-racial and democratic elections should be as representative as possible. South Africa's average daily prison population of over 100 000 is an important and vulnerable interest group which should be represented in the constitution making process.

The historical context in which the elections will take place is one in which the widespread perception exists that many prisoners are the victims of Apartheid's socio-economic policies.

We submit that the current legal position in South Africa is unsatisfactory and that the right of prisoners to vote is in accord with general human rights norms and the constitutions of countries which contain bills of rights.

2. Legal position in South Africa

The right of prisoners to vote is presently governed by the Electoral Act.

Sec. 2(a) of the Electoral provides that any person who has been convicted and sentenced to a period of imprisonment without the option of a fine or detained under the Abuse of Dependence-producing Substances and Rehabilitation Centres Act shall not be entitled to be registered or to vote during the period of his detention.

Sec. 4(a) of the Electoral Act also provides that persons convicted of high treason or murder after 10 June 1950 or an offence under the Internal Security Act are ineligible to vote.

Note: The Technical Committee should be mindful of sec. 1 of the Correctional Services Act which defines a "prisoner" as, "any person, whether convicted or not, who is detained in custody in any prison..." It is clear that awaiting trialists fall within this definition and any provision which excludes "prisoners" from voting should make this distinction.

3. Legal position in other countries

In the short time at our disposal we conducted the following survey of the position in other countries:

3.1 Germany

In Germany only persons convicted of acts against the Basic Law (constitution) can be stripped of their civil-political rights. The loss of these rights does not occur automatically upon

conviction but must be specifically ordered by the judge or jury when passing sentence.

4. Human Rights perspective

In Carbone J.A.'s minority judgment in Goldberg v Minister of Law and Order it was stated: "It seems to me that fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties of an ordinary citizen except those taken away from him by law, expressly or by implication, or those necessarily inconsistent with the circumstances in which he, as a prisoner, is placed."

We would argue that far from being necessarily inconsistent with the circumstances in which s/he as a prisoner is placed prisoners perhaps more than other disadvantaged social groups should have the right to vote.

It is in accord with a modern, enlightened, human rights orientated outlook on the nature and function of prisons that prisoners should maintain their ties with society as far as possible.

5. Recommendations

- 1) We recommend that, in so far as South Africa's first non-racial election is concerned, prisoners be given the right to vote and that a representative constitution making body decide upon the future position.
- 2) That special provision be made for those person who are neither prisoners nor officially awaiting trial.
- 3) In view of prisoners' vulnerability to coercion and intimidation we recommend that provision be made for a programme of voter education to be run by independent and impartial agencies and that election monitors be deployed at all prison polling booths.